leave open the possibility that carriers may mutually agree to separate dedicated trunks for local, intraLATA toll, and interLATA toll traffic.

Therefore, as NECs establish operations within individual ILEC local calling areas, the perimeter of each such local calling area, as revised to reflect EAS, shall constitute the demarcation for differentiating local and toll call types for the purpose of traffic termination compensation. Any end user call originating and terminating within the boundary of such local calling area, regardless of the LEC at the originating or terminating end, shall be treated as a local call, irrespective of subsequent changes in the ILEC's local calling area. The Commission shall specify the date upon which a NEC is deemed operational in an ILEC local calling area in effectuating this guideline. Nothing in these preclude the Commission for deciding on a case-by-case basis that an ILEC's local calling area should be expanded, thereby expanding the definition in this section for what should be treated a local call for traffic termination compensation purposes.

Most commenters now agree that the 1996 Act maintains bill and keep as a method of compensation for transport and termination of local traffic. Cincinnati Bell, while claiming that the Commission should not generically adopt bill and keep as a method by which all local traffic should be compensated, even acknowledges that bill and keep is not precluded pursuant to the 1996 Act. Thus, the argument that bill and keep is an unlawful compensation method need not be further addressed. The Commission also interprets Section 252(d)(2)(B) of the 1996 Act to authorize us to impose bill and keep arrangements in an arbitration process and does not limit our authority to authorize bill and keep if arrived at only through voluntary negotiations.

We also disagree with the assertion made by the NECs that a distinction between local and toll traffic is now prohibited under Section 252(d)(2) of the 1996 Act.[25] These commenters are essentially arguing that the 1996 Act has preempted current access charges when toll calls are terminated. This analysis fails to take into account other requirements of the 1996 Act. Section 251(g) of the 1996 Act states that:

> On and after the date of enactment of the Telecommunications Act of 1996, each local exchange carrier, to the extent it provides wireline services, shall provide exchange access, information access, and information service providers in accordance with the same equal access and nondiscriminatory interconnection restrictions and obligations (including receipt of compensation) that apply to such carrier on the date immediately preceding the date of enactment. . . until such

[25] We recognize that this determination addresses an issue raised in AT&T's's complaint, Case No. 96-36-TP-CSS against Ameritech. However, we specifically note that a remaining issue is the rate AT&T must pay for access. That issue remains open for resolution in Case No. 96-336-TP-CSS.

> restrictions and obligations are explicitly superseded by regulations prescribed by the Commission. . . .

Further, the legislative history of Section 251 eliminates any argument that Interexchange access charges are affected by the 1996 Act. The Joint Explanatory Statement of the Committee of Conference at page 117 states:

> The obligations and procedures prescribed in this section do not apply to interconnection arrangements between local exchange carriers and telecommunications carriers under section 201 of the Communications Act for the purpose of providing interexchange service, and nothing in this section is intended to affect the Commission access charge rules.

V. PRICING STANDARDS

The revised guidelines set forth general principles of pricing. These guidelines apply to the facilities, functionalities, and services offered by all LECs except for the resale pricing standards which apply only to ILECs. In most cases, prices shall be set so that the LEC recovers its LRSIC and a reasonable contribution to joint and common costs incurred by the LEC.[26] This contribution level may vary among services. However, essential non-competitive funcitionalities, facilities, and services included in the definition of state universal service, shall bear no more than a reasonable share of the joint and common costs necessary to provide those services. Rather, those subsidies associated with the provision of universal service shall be identified and recovered separately through the state universal service fund. Volume and geographically-based deaveraging discounts shall be made available to all LECs on a nondiscriminatory basis.

The revised guidelines further set forth that prices for interconnection and unbundled network elements shall be set so that the LEC recovers its LRSIC for providing interconnection and unbundled rate elements and a reasonable contribution to the joint and common costs incurred by the LEC. The profit level included in the LRSIC shall be the cost of capital which shall constitute "reasonable profit" for purposes of the 1996 Act. In the event a LEC believes that the cost of capital does not provide a reasonable profit, it has the burden of proof to establish, to the Commission's satisfaction, that a higher profit is warranted. The price for interconnection rate elements or unbundled network rate elements shall be set at LRSIC, plus an appropriate allocation of joint costs, plus 10 percent of the sum of LRSIC and allocated joint costs for the recovery of common costs. A LEC seeking a waiver from this pricing standard shall have the burden of proving that such price level is not compatible with the price established for the comparable functionality or facility provided by the LEC for the transport and termination of local traffic and to demonstrate any detrimental financial impact of such pricing. The revised guidelines also set forth a method of allocating

[26] The exception to this general standard would be the pricing guidelines applicable to interim and long-term number portability for all LECs and wholesale pricing applicable to ILECs only.

joint costs among services as well as a methodology for developing LRSIC for interconnection and unbundled network elements.

Transport and traffic termination prices shall be set at a level that allows the carrier to recover LRSIC and a reasonable contribution to the joint and common costs incurred by the LEC. Prices shall be set above a price floor reflecting LRSIC, an appropriate allocation of joint costs, plus 10 percent of the sum of LRSIC and allocated joint costs for the recovery of common costs. The price shall also be set at a level that allows the LEC to pass an imputation test for local traffic in the aggregate on a total customer basis (i.e., residence and business). The price ceiling shall be the maximum price to be established such that it allows the LEC to pass an imputation test.

Prices for interim number portability utilizing RCF or DID shall be set at a level that takes into account of the relative inferior quality of the service provided, its interim nature, and its necessity for the development of a competitive market for local exchange services. The costs of long-term number portability shall be borne by all carriers on a competitively neutral basis. ILEC retail services offered at a discount or as a promotion shall be available to other carriers at a wholesale price that reflects either the promotional rate minus 10 percent or the wholesale rate, whichever is lower. As a final pricing matter, ILECs'[27] retail services shall be available for resale and priced on a wholesale basis. ILECs' wholesale prices shall be based on the retail rate charged to end users excluding the portion attributable to any marketing, billing, collection, and other costs that will be avoided by the ILEC.

ILECs shall be subject to certain imputation requirements if a service under review is offered by at least one other provider in the relevant market or geographic area if the competitor's service relies upon an essential input provided by that ILEC in the relevant market and if the ILEC uses the same essential input to provide its comparable service. The price of an ILEC service subject to the imputation requirement shall be equal to or greater than the sum of the tariffed rate for the essential input actually used by the carrier in its service offering as such rate would be charged by that carrier to any purchaser of that essential input with that market as well as the LRSIC of all other components of the carrier's service offering. An ILEC shall submit an imputation test for Commission review and approval whenever it files tariffs to introduce a new service subject to imputation requirements, files tariffs to reduce rates for a service subject to imputation requirements, or files tariffs to increase rates for essential inputs which are utilized in providing a competitive service. Included in the Commission's review of an imputation test will be the reasonableness of the relevant market or geographic area defined by the ILEC

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[27] Pursuant to Section 251(b)(1) of the 1996 Act and the Resale Guidelines discussed below, NECs have an obligation not to prohibit and not to impose unreasonable or discriminatory conditions or limitations on the resale of its telecommunications services. However, NECs are not subject to any pricing standards on resold services other than the unreasonable or discriminatory standard discussed above.

MFS asserts that Section 252(d)(1) of the 1996 Act requires that ILEC rates for the interconnection of facilities and equipment and for unbundled network components must be based on the cost (determined without reference to a rate-of- return proceeding) of providing the interconnection or network element and be non-discriminatory. Based on these factors, MFS maintains that the Commission must price ILEC unbundled network elements at LRSIC with no contribution (MFS supp. comments at 9). MFS further avers that Section 252(d)(2) of the 1996 Act requires that reciprocal and mutual compensation rates must be based upon the incremental costs (LRSIC) of transporting and terminating calls. Staff's proposal to include contribution in traffic termination rates is clearly at odds with the incremental pricing methodology contemplated by the 1996 Act according to MFS. In establishing mutual and reciprocal traffic termination rates, MFS encourages the Commission to base those rates on the hypothetical long run incremental cost of an efficient LEC operating in a competitive market (MFS supp. comments at 7). In their supplemental reply comments, MCI and MFS reject ALLTEL's assertion that the 1996 Act contemplates the use of embedded costs for pricing interconnection and network elements since embedded costs reflect historical costs, not forward looking costs (MCI supp. comments at 6; MFS supp. comments at 4). TCG posits that Ameritech's citation to Section 252(d)(2)(A)(ii) of the 1996 Act as support for including the cost of capital in the calculation of "additional costs" for calculating traffic termination rates is clearly erroneous because the cost of capital is the focal point of a rate proceeding (TCG supp. reply comments at 4).

Ameritech argues that a close analysis of the language in the 1996 Act reflects that rates for interconnection, network elements, and terminating traffic be set at a level that recovers both LRSIC and a contribution to joint, common, and other costs (Ameritech supp. reply comments at 4-5, 8). Ameritech also asserts that MFS' suggestion that a hypothetical carrier's LRSIC be created to establish traffic termination rates does not comply with Section 252(d) of the 1996 Act which requires that recovery be provided for "by each carrier of costs. . .on each carrier's network facilities" (*Id.* at 7). ALLTEL asserts that Section 252(d) of the 1996 contemplates the use of embedded costs for pricing of interconnection, network elements, and transport and traffic termination rates (ALLTEL supp. comments at 5). As support for the argument that contributions to joint and common costs are to be recovered through pricing of all services, ALLTEL notes that Section 254(k) of the 1996 Act only authorizes the recovery of a reasonable allocation of joint and common costs from services defined as universal services. Therefore, the remaining joint and common costs must be recovered from the remaining services (*Id.*). GTE maintains that the 1996 Act, in Section 252(d)(1), authorizes the recovery of a reasonable profit in rates charged for interconnection and unbundled network elements. However, before a reasonable profit can be generated, a company must have recovered some contribution toward the recovery of joint and common costs (GTE supp. comments at 8).

As noted in the revised guidelines regarding interconnection and unbundled network element pricing as well as the pricing for transport and traffic termination, we disagree with the interpretation of MFS and other NECs that ILECs must price these functionalities at LRSIC with no contribution to joint and common costs. Section 252(d)(1)(a) of the 1996 Act is clear that state commissions in determining the justness and reasonableness of the rates established for the interconnection of facilities and equipment as well as network elements shall determine the rates *based on the cost* of providing interconnection and network elements and whether the rates are nondiscriminatory. In addition, a state commission may include a reasonable profit. If Congress had intended that the rates for interconnection and network elements be established at cost (LRSIC) then it would have so stated. It is also important to note that Congress included in the pricing guidelines that the rates may include a reasonable profit. Before a LEC could recover a profit on a particular rate, as permitted by this legislation, the LEC would have to recover some portion of its joint and common costs which are recognized by the Commission as costs incurred by the LEC in directly providing a family of services (joint costs) and indirectly in providing all services offered by that LEC (common costs). Further, as noted by several ILECs, Section 254(k) of the 1996 Act requires the FCC, for interstate services, and the states for intrastate services, to establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services. By definition, therefore, a LEC has to recover the rest of its joint and common costs from the remaining services. Finally, as a matter of economic principle, it is not possible for a firm to price all its services at its LRSIC without recovering its joint and common costs from those services. The plus 10 percent factor we have adopted will avoid disputes as to whether the LEC has excess joint and common costs. It is also consistent with our application of alternative regulation to Ameritech and Cincinnati Bell, where a plus 10 percent standard for recovery of joint and common costs was adopted.

For similar reasons, we reject the NECs arguments that the rates for transport and traffic termination must be set at LRSIC. Rather, we have determined that the rates should allow all LECs to recover their LRSIC of providing the service plus a reasonable contribution to the joint and common costs incurred. We also reject MFS' suggestion that the rates for transport and traffic termination be set at a rate based upon the LRSIC of a hypothetical efficient LEC. The suggestion is clearly at odds with the provisions of Section 252(d) of the 1996 Act which state that such rates provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the facilities of another carrier. Moreover, no commenter in this proceeding shares MFS' view on this matter.

Regarding interim number portability pricing, we recognize that the prices LECs may charge other carriers for this service are not at the level ILECs have heretofore been able to charge end users. Since these are interim solutions which will be replaced with a permanent solution in the near future, no carrier will be harmed by such an approach. Moreover, adoption of this interim pricing proposal recognizes the inferior quality provided by RCF and Direct Inward Dialing (DID) as a number portability mechanism.

This is not surprising, however, given that RCF and DID were not designed for this purpose.

We further dismiss ALLTEL's position that embedded costs be used to establish the rates for interconnection, network elements, transport, and traffic termination. Embedded costs represent the historic method of setting rates in a rate case-type proceeding. In evaluating the justness and reasonableness of interconnection and network rate elements, the 1996 Act directs state commissions to consider the costs without reference to a rate-of-return or rate-base proceeding. Similarly, in determining the appropriate charges for transport and traffic termination, the state commissions are not to engage in any rate regulation proceeding to establish with particularity the additional costs associated with transport and traffic termination nor are we to require carriers to maintain records with respect to the additional costs of calls. As indicated previously, we will not guarantee a "make whole" between LRSIC, and embedded costs. The appropriate treatment of such revenues will be examined closely if an ILEC seeks to increase a basic local exchange rate under Sections 4909.18 or 4927.04, Revised Code.

The final argument we must address in the pricing section is whether or not capital costs are an appropriate element to recover in a calculation of the "additional costs" associated with traffic termination rates. Since capital costs are an appropriate factor to include in the LRSIC calculation and since the guidelines permit all LECs to set their prices at a rate that recovers LRSIC, we find that capital costs are an appropriate factor for recovery in traffic termination rates. Moreover, as noted above, the capital costs will be included in a LRSIC study and not established pursuant to rate-of-return or rate case-type proceeding as addressed in the 1996 Act. As a result, we will make the determination concerning an appropriate forward-looking cost of capital rather than use the cost authorized in the company's last rate-of-return proceeding.

VI. TARIFFING REQUIREMENTS

Due to revisions made throughout the other sections of staff's proposal, the tariffing requirements section has been significantly edited. This section has also been rewritten in order to clear up much of the confusion evident among the commenters. The revised guidelines require all LECs to maintain end user tariffs. NECs affiliated with competitive telecommunication service providers can retain 563 treatment provided the NEC and CTS provider are separate affiliates and comply with the applicable affiliate transaction guidelines. Otherwise, all NEC services will be regulated according to the procedures set forth in these guidelines. New service applications for NECs shall be subject to a 30-day prefiling notice and a 0-day effective date following filing with the Commission. The Commission retains the right, however, to impose a full or partial suspension under the appropriate circumstances. ILECs' tariff filings will be subject to their currently applicable regulatory framework.

NECs will establish their end user rates based upon the marketplace and are not required to develop and submit LRSIC studies justifying the rates charged. In addition, NECs are authorized to file flexible rate schedules. Flexible rate schedules have an established minimum and maximum rate, with the rates applicable at any given time within the range of minimum and maximum levels being set forth in price lists on file with the Commission. A change in rates, either upward or downward, within the approved flex band schedule will not require any action on the part of the Commission, because the prior approval of the minimum and maximum levels constitutes approval of each rate within the range. The Commission reserves the right to apply specific pricing limitations on certain NEC services.[28] The Commission also, reserves the right to request cost or other information and NEC pricing practices are subject to Section 4905.33, Revised Code. Although we are not, at this time, reviewing the end user rates of the NECs, we reserve the right to do so if, as suggested by OCC, a NEC becomes dominant in the marketplace. A NEC with significant market power and dominance can be potentially as damaging to effective competition as an ILEC with unregulated control of bottleneck monopoly facilities. ILECs' end user rates will be subject to each ILEC's currently applicable regulations (i.e., alternative regulation, traditional regulation, or 564).

Additionally, those carriers providing service through their own facilities or in combination with its own facilities will be required to maintain carrier-to-carrier tariffs which shall include services, features, and functionalities for purchase by any certified LEC. Only certified carriers will be permitted to purchase from the carrier-to-carrier and carrier resale tariffs. An ILEC's initial carrier resale tariff filing will not be subject to any automatic approval process. A facilities-based NEC's initial carrier resale tariff filed with a certification application will be subject to an automatic 60-day approval process, unless suspended. A LEC may also prepare and file with the Commission a carrier-to-carrier tariff, other than for resale, which contains the terms and conditions for services, features, and functionalities that such company generally offers. Any negotiated terms and conditions between carriers which have been approved by the Commission must be made available on a nondiscriminatory basis to any certified carrier. Initial carrier-to-carrier service tariffs filed by ILECs will not be subject to an automatic approval process. Initial carrier-to-carrier tariffs filed by a NEC shall be subject to an automatic approval process if filed within the context of the NECs' certification proceeding..

For carrier-to-carrier new services following the initial tariff filing, NECs shall be subject to a 30-day prefiling notice to the Commission's staff followed by a 0-day effective date unless suspended. ILECs' carrier-to-carrier tariff filings after the initial tariff filing, will be processed based upon the ILEC's currently applicable framework; however, an ILEC may apply for tariff filing parity under certain circumstances. NECs will also be permitted to change the terms and conditions of an existing service or withdraw an existing service by filing an ATA. Such application will be subject to a 30-day automatic approval procedure and will become effective 31 days after filing unless suspended. In applications seeking to withdraw a service or to change the terms of an

[28] For example, NEC surcharges and MTS rates offered in conjunction with alternative operator services will be capped at the levels established by the Commission in 563.

existing service the NEC must provide documentation that prior customer notice was given to the affected customers.

Notice of price list changes must be filed by the NEC in its TRF docket and shall be effective upon filing. Moreover, where end user customers or resellers or both are affected by a price list increase, within an approved range of rates as opposed to an overall rate increase, prior notice must be given to such customers. NEC increases outside of an approved range will be processed pursuant to the Ohio Revised Code. An ILECs' price list filings shall be processed based upon their currently applicable regulatory framework; however, an ILEC may apply for tariff filing parity.

NECs will also be permitted to offer end user and carrier resale promotions provided the terms and conditions of all promotions are identified in price lists filed in the NEC's TRF docket. NEC promotional offerings shall be effective on the day of filing. End user promotional tariff offerings must be filed in writing with the Commission and shall be treated as applications not for an increase in rates provided the company has a provision in its tariff which indicates that it may from time-to-time, upon approval of the Commission, engage in special promotions. Promotional tariff offerings will be presumed to be just and reasonable, unless the Commission finds otherwise, and thus, will be allowed to automatically go into effect upon filing absent contrary Commission action. The Commission considers a promotional tariff offering to be a trial service offering of limited duration (i.e., not to exceed 90-days per trial period per customer) designed to attract new customers to a particular carrier or to increase an existing customer's awareness of a particular tariff offering of the carrier. Promotional tariff offerings only affect recurring end user charges; there is not limit upon a waiver of non-recurring charges. Section 4905.33, Revised Code, shall apply to all promotional offerings. End user promotional tariff offerings must be available for resale to other certified carriers pursuant to the pricing standards set forth in Section V. E. 4. The 10 percent discount in the promotional rate is designed to prevent a price squeeze by recognizing 10 percent as a proxy for the resellers joint and common costs which would need to be recovered. Absent the differential, we would be sanctioning price squeezes and predatory pricing in contravention of the pro-competitive policies embodied in state law and the 1996 Act. ILEC promotional tariff offerings will be processed based upon the ILEC's current regulatory framework. An ILEC may apply for tariff filing parity.

Requests for geographic market-based deaveraging by customer type or class, submitted in accordance with Sections 4909.18 and 4909.19, Revised Code, will be considered by the Commission only when the carrier can demonstrate that the request is consistent with the public interest, is a necessary and appropriate response to differences in prevailing market prices, and will not serve to discourage entry or lessen competitive forces. The revised guidelines also establish procedures for consideration of both end user and carrier-to-carrier contracts, including fresh look, termination liability, and coverage of allegedly proprietary information. As a final matter, ILECs, once there is an operational NEC operating in its service territory, may file an application to receive tariff filing flexibility as afforded the NECs. In order to receive such flexible treatment, the ILEC must docket a UNC case subject to Commission approval.

Several ILECs maintain that, in a competitive market, there is no rational reason to treat ILEC and NEC tariff filing requirements in a dissimilar fashion. OCC submits that in a truly competitive market the rationale for this distinction may cease to exist, but a competitive local exchange market does not exist at this time (OCC reply comments at 88). Several consumer groups reject deaveraging as being premature. According to OCC, a LEC seeking to deaverage should have to demonstrate that the request is in the public interest, is a necessary and appropriate response to the prevailing market, will not discourage entry or lessen competitive forces, will result in a price reduction, and will not be permitted on less than an exchange basis (OCC initial comments at 56). United/Sprint and OCC assert that unbundled services should not be made available to end users (United/Sprint initial comments at 29; OCC reply comments at 89). OCC also argues that permitting NECs to set their prices based on the marketplace without cost support and the filing of minimum/maximum ranges for basic services is unlawful. OCC claims that the only method whereby a NEC could seek to change a basic rate would be to file an application pursuant to Section 4909.18 or Section 4927.04, Revised Code. The legal arguments, notwithstanding, OCC notes that instantaneous rate increases should be forbidden. At a minimum, OCC avers, end users should be given a 30-day notice during which end users could drop or change service before incurring any costs.

As noted above, there have been modifications made in the tariff filing process. While NECs have been afforded greater tariff and pricing flexibility, an ILEC may seek similar treatment in an appropriate regulatory proceeding once it has a NEC operating in its service territory. By so doing, we are adopting policies which, under the appropriate circumstances, can allow the ILEC to achieve parity with NECs in the filing of new services. This is a significant improvement for ILECs, especially for those ILECs which have not yet availed themselves of the alternative regulation process. ILECs are also not prohibited at any time from filing an alternative regulation case, even before it is subject to competition, seeking more flexible treatment of its tariff and pricing standards. The guidelines, as adopted, afford the ILECs adequate opportunities to meet competition within their service territories.

The Commission also finds that, contrary to the implicit argument made by consumer groups, geographic market-based deaveraging will not automatically be approved. As set forth in the proposed guidelines, the Commission will consider deaveraging requests; however, those petitions are contingent upon an appropriate showing by the requesting LEC and are certainly contingent upon the Commission approving the application pursuant to Sections 4909.18 and 4909.19, Revised Code. Further, any interested person or group has the ability to challenge the request for deaveraging by filing a motion seeking intervention. Finally, as is always the case concerning any public utility service, an aggrieved party has an opportunity to file a complaint pursuant to Section 4905.26, Revised Code.

We also determined that the existence of certain long-term arrangements raise potential anticompetitive concerns since these arrangements have the effect of locking out the competition for an extended period of time and prevent consumers from obtaining the benefits of this competitive local exchange environment. To address this, we conclude that certain ILEC consumers with long-term arrangements should be given an opportunity to take a one-time "fresh look" to determine if they wish to avail themselves of a competitive alternative. Recognizing the administrative difficulties inherent in an unlimited fresh look opportunity, we have indicated that the Commission will establish the time period for any fresh look opportunity and will establish appropriate procedures for any customer notification. Moreover, if a customer chooses to terminate a long-term arrangement within the prescribed period, the termination charge will be limited. Upon inquiry, an ILEC must fully inform the customer of the opportunity attributable by this section.

The final issue we need to address under tariffing concerns the issues raised by OCC. Specifically, OCC challenges the lawfulness of permitting NECs to establish their end user prices without cost support and the authority of the Commission to authorize a minimum/maximum pricing range for basic telecommunication services. In its comments, OCC claims that NECs can only make a change to basic rates through Section 4909.18, Revised Code, based upon the method set forth in Section 4909.15, Revised Code, unless the Commission approves an alternative method under Section 4927.04, Revised Code. The Commission disagrees. Section 4905.31, Revised Code, provides the Commission the statutory authority to establish flexible pricing. Section 4905.31, Revised Code, provides, in relevant part:

> [E]xcept as provided in section 4933.29 of the Revised Code, Chapters 4901., 4903., 4905., 4907., 4909., 4921., and 4923, of the Revised Code do not prohibit a public utility from filing a schedule or entering into any reasonable arrangements with another public utility or with its customers, consumers, or employees providing for. . .[A]ny other financial device that may be practicable or advantageous to the parties interested.

The Commission's authority to establish flexible pricing through the use of minimum and maximum bands was specifically upheld by the Ohio Supreme Court in *Armco, Inc. v. Pub. Util. Comm.*, 69 Ohio St. 2d 401 (1982). The Court found that flexible pricing was, for purposes of the statute, a financial device which provided customers a more meaningful range of telecommunications options (*Id.* at 408). The Court also noted that Section 4905.31, Revised Code, was an exception to the general ratemaking formula and that the premise underlying the Commission's flexible pricing treatment for the involved carrier was the existence of increasing and effective competition from unregulated suppliers in the marketplace. Moreover, the provisions of Chapter 4927, Revised Code, governing providers with less than 15,000 access lines provide additional support for our determination.

As we have heretofore noted in this docket, the whole purpose behind the adoption of these guidelines is to foster the development of a competitive local exchange marketplace which will benefit customers by providing them with innovative services and features, better customer service, and competitive prices. As such, a competitive local market is certainly practicable and advantageous to both customers and end users. Moreover, from the NECs' perspective, the competition that they are facing is the ILEC, certainly a formidable opponent and one that serves, at the present time, practically all of the landline local telecommunications market. Thus, from the NECs' perspective, there will be stiff competition in the market they seek to provide service in. Moreover, NEC customers are still protected under these guidelines because the Commission has reserved its right to request cost or other information required to audit a NEC's rates. NEC competitors are protected from unreasonable pricing policies because, as noted above, the Commission retains the ability to audit NEC rates and, further, we are subjecting NEC rates to Section 4905.33, Revised Code, which prohibits furnishing service below cost for the purpose of destroying competition. We would also note that OCC's arguments on this issue have not been wholly disregarded because the guidelines, as revised, now require prior notice to residential customers affected before a price list increase takes effect.

VII. FILING PROCEDURES AND REGISTRATION FORM

A. GENERAL GUIDELINES

1. Registration Form

There are two forms which all NECs must use in implementing the procedures established under the local competition guidelines. One such form is the Local Exchange Carrier Registration Form (Registration Form).[29] This all-purpose form should accompany virtually every filing made by a NEC on or after August 15, 1996. For example, this form would be used for purposes including, but not limited to: receiving initial certification to provide basic local exchange service in Ohio; changing any element of a NEC's operations; changing any element within a NEC's tariff, including textual revisions and price adjustments; and seeking approval of a negotiated agreement between carriers or seeking arbitration.

Essentially, the Registration Form will function as a standardized cover letter for virtually any type of filing pursuant to the guidelines set forth in Appendix A. As such, if properly completed, it should serve to help identify the nature of the filing in terms of its appropriate standing within the overall local competition procedural framework. The Registration Form may be revised from time to time. Changes of either a non-

[29] Appendix A, Attachment B.

substantive or informational nature may be made by the Commission or its staff, and will not necessarily be the result of action taken specifically by order or entry. The staff will maintain, at all times, an updated and current copy of the Registration Form. In addition, an updated Registration Form will be maintained on file in this docket.

2. Service Requirements Form

In an attempt to reduce the volume of standardized language which would otherwise be required to appear in a NEC's informational tariff, the Commission has devised the Service Requirements Form for use in conjunction with the Registration Form on or after August 15, 1996. The purpose of this form is to set forth specific Commission-mandated language which, if it did not appear within the Service Requirements Form, would need to be included in the tariffs of each NEC subject to competition, as applicable to the scope of its operations. Rather than have the required standardized language repeated in so many tariffs, the Commission will permit each NEC subject to competition to file a Service Requirements Form along with the Registration Form indicating which language pertains to the provider's operations. In addition, on the face of the Registration Form, the provider will commit to conducting its operations in conformity with all applicable service requirements indicated thereon. The Service Requirements Form may be revised from time to time. Changes of either a non-substantive or informational nature may be made by the Commission or its staff, and will not necessarily be the result of action taken specifically by order or entry. The staff will maintain, at all times, an updated and current copy of the Service Requirements Form. In addition, an updated Service Requirements Form will be maintained on file in this docket.

3. TRF Docket

By entry dated February 6, 1990, in Case No. 89-500-AU-TRF (89-500), the Commission established tariff filing and maintenance procedures for all utilities. At that time, the Commission began the practice of assigning a separate tariff docket (under a TRF purpose code) to each utility. TRF dockets are designated for the filing of final tariffs and are maintained by the Commission for each utility company, including LECs subject to competition. Under the local competition guidelines the Commission will continue to employ the tariff filing and maintenance procedures established in 89-500.

4. Tariffs

Under the local competition guidelines, in order to provide local exchange services in the state of Ohio, a LEC must maintain on file with the Commission, complete tariffs which, at a minimum, must include a title page, a description of all services offered, including all terms and conditions associated with the provision of each service, a description of the actual serving and local calling areas, a complete price list, and a notation reflecting both the issuance and effective date.

5. Time Frames

Certain filings pursuant to these guidelines will be handled through an automatic process. With the exception of 0-day filings, an automatic time frame will begin on the day after a filing is made with the Commission's Docketing Division. Furthermore, under an automatic process, if the Commission does not take action before the expiration of the filling's applicable time frame, the filing shall become effective as early as the following day. However, nothing in these guidelines precludes the Commission from imposing a full or partial suspension on 0-day filings on or after the effective date.

6. Suspensions

Under the local guidelines, the Commission, Legal Director, Deputy Legal Director, or Attorney Examiner may fully or partially suspend an application for either a definite or indefinite period of time. If the suspension is for an indefinite period of time, the Legal Director, Deputy Legal Director, or Attorney Examiner may remove the suspension and reinstate a new automatic time frame for approval. A full suspension, which can be imposed either before or after the passing of any automatic or notice time frame, will prevent the suspended service offering or involved regulated activity from either becoming or remaining effective. Under a partial suspension, the service offering or involved regulated activity is allowed to become or remain effective, subject to its continued review, and possible modification, by the Commission. Incompleteness of an application made pursuant to the local competition guidelines may constitute grounds for suspension. Suspensions may be for either a definite or indefinite period of time. The Commission further authorizes the Legal Director, Deputy Legal Director, or Attorney Examiner to remove the suspension imposed on an application which may be suspended for an indefinite period of time and to reinstate a new automatic approval time frame.

VIII. UNBUNDLING

Under the staff's proposal, all LECs had the obligation to unbundle their network and associated functionalities into the most reasonably disaggregated components capable of being offered for resale upon bona fide request of a certified provider or end user. Staff's proposal also set forth the major categories of components subject to unbundling, general unbundling requirements, and the rate requirements associated with purchasing unbundled components. Cincinnati Bell argues that the staff's mandatory unbundling proposal violates the constitutional guarantee against a "taking" of private property for a public use without adequate compensation. A discretionary unbundling provision would, according to Cincinnati Bell, pass constitutional muster. Provided the legal concerns can be addressed, Ameritech suggests adopting a set of criteria by which the appropriateness of an unbundling request could be judged (Ameritech initial comments at 58). A number of commenters suggest that the Commission more fully define the major categories of components subject to the unbundling requirement. For instance, ICG requests clarification of whether local access includes loop facilities or not (ICG initial comments at 4). Several parties maintain that requiring the NECs to unbundle upon their entrance into the local market is unfair and may actually slow down the penetration that NECs would be able to achieve in the local market. These commenters urge the Commission to afford NECs an incubation period. As a final matter, it has been suggested that the Commission price the unbundled LEC components for use by certified carriers at LRSIC instead of at LRSIC plus some level of contribution.

Several NECs maintain that the 1996 Act significantly affects staff's proposal. For instance, Cablevision and MFS aver that Section 251(c)(3) of the 1996 Act only obligates ILECs to unbundle their systems and that a requirement which forces NECs to unbundle constitutes a barrier to entry (Cablevision supp. comments at 4; MFS supp. comments at 11-12). Ameritech, on the other hand, posits that the FCC will determine the appropriate level of unbundling and, therefore, staff's proposal is superseded by the 1996 Act (Ameritech supp. comments at 8-9). CompTel claims that the 1996 Act provides carriers the opportunity to combine elements into a network platform configuration (CompTel supp. comments at 5). Regarding pricing, MFS maintains that, under the 1996 Act, the ILECs have to set the rates for unbundled components at LRSIC (MFS supp. comments at 12). ALLTEL, on the other hand, suggests that since the services that are part of universal service can only recover a reasonable allocation of joint and common costs, this infers that the remaining joint and common costs will be recovered through other services such as interconnection, unbundled elements, and traffic termination rates.

As pointed out by several parties, the adoption of the 1996 Act obligates ILECs, under Section 251(c)(3), to provide nondiscriminatory access to network elements on an unbundled basis.[30] Therefore, the argument that unbundling should be at the option of the ILEC is moot. The 1996 Act also requires the FCC, within six months following the date of enactment, to establish all regulations necessary to determine what constitutes network elements. In making its determinations, the FCC is directed to consider the proprietary nature of the network elements and whether the failure to provide access to any network element would impair the ability of a telecommunications carrier to provide the services it proposes. Under Section 251(d)(3), the FCC may not preclude any state commission regulation, order, or policy that establishes access and interconnection obligations of LECs[31]; is consistent with the requirements of the 1996 Act; and does not substantially prevent implementation of the requirements and purposes of the 1996 Act.

The final guidelines have been modified in light of the provisions of the 1996 Act to reflect that ILEC and facilities-based NECs shall unbundle their respective local

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30 This obligation applies to all ILECs not subject to the RLEC exemption or for which a modification or suspension has been obtained pursuant to the procedures outlined for rural carriers in Section 251(f)(2).

31 LECs are defined under the 1996 Act as any person engaged in the provision of telephone exchange or exchange access. This definition would include LECs and NECs as those terms are used within this order.

network into elements at any technically feasible point upon bona fide request of a certified carrier. Unbundling shall include access to necessary customer databases such as LEC-owned or controlled 9-1-1 databases, billing name and address, directory assistance, line information database, and 800 databases. Such unbundling should also include operator service, and SS7 functionalities. Unbundled network rates, terms, and conditions shall be established through negotiation between LECs upon receipt of a bona fide request or through arbitration. Rates, terms, and conditions may also be established through tariffs ordered and/or approved by the Commission.

Regarding the pricing of unbundled network elements, Section 252(d)(1)(A) and (B) of the 1996 Act sets forth the parameters a state commission must consider when pricing the unbundled network components. A state commission's determination of a just and reasonable rate shall be based upon the cost of providing the network element, nondiscriminatory, and may include a reasonable profit. Staff's proposal regarding the pricing of carrier-to-carrier services (i.e., LRSIC plus a reasonable contribution to joint and overhead costs) appears to be neither inconsistent with nor would prevent implementation of the 1996 Act; therefore, staff's proposal on pricing as revised to reflect the previous discussion in the Pricing Standards section of this order will be adopted.

We also disagree with Cincinnati Bell's position that staff's unbundling proposal would effectuate an unlawful taking of ILEC private property. According to the company, the Commission has no authority to order a taking of ILEC private property. Cincinnati Bell mischaracterizes the issue by failing to recognize that Cincinnati Bell is a public utility and a common carrier under Title 49 of the Ohio Revised Code. As such, it has voluntarily dedicated the property through which it provides telephone service to a public use. As stated by the United States Supreme Court in *Munn v. Illinois*, 94 U.S. 113 (1877), when private property is devoted to a public use, it is subject to public regulation.[32] The Commission, in compelling the ILECs (such as Cincinnati Bell) to restructure the provisioning, pricing, and interconnecting of their networks which have been devoted to a public use into unbundled components, is well within the authority vested in it by the Ohio General Assembly, pursuant to Sections 4905.05 and 4905.06, Revised Code.

Cincinnati Bell further maintains that, even if the Commission did have such authority, Article I of the Ohio Constitution and the Fifth Amendment of the United States Constitution, as made applicable to the states by the Fourteenth Amendment, mandate that when private property is taken for public purposes, the owner shall be compensated. According to Cincinnati Bell, just compensation includes recovery of embedded plant investment and facilities that become stranded as a result of the

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[32] Conspicuously absent from Cincinnati Bell's legal analysis is any discussion of the most recent United States Supreme Court cases to address taking claims as they relate to public utility property. Additionally, the Ohio Supreme Court, in *Celina*, supra, rejected an unconstitutional taking claim holding that utilities which are subject to regulation by the public utilities act, Section 614-2a, General Code, are subject to different taking standards than private businesses.

introduction of local exchange competition. Assuming arguendo that the unbundling proposal amounts to a compensable taking of property,[33] Cincinnati Bell will be justly compensated by the pricing standards for unbundled network components. Under revised guideline V.B., ILECs', including Cincinnati Bell, prices for unbundled network components shall be set so that the ILEC recovers its LRSIC (economic costs) of providing unbundled rate elements plus a reasonable contribution to the joint and common costs incurred by the company as discussed previously in the Pricing Standards section.

. In addition, the revised guidelines provide that prices for unbundled network elements may include a reasonable profit. We also disagree with Cincinnati Bell's premise that just compensation includes recovery of investment stranded by the establishment of local exchange competition. First, it is premature to consider this argument as there are no competitive local providers operating in Cincinnati Bell's service territory; therefore, there can be no "stranded investment" at this time. Cincinnati Bell further fails to show with particularity the investment that is in danger of becoming stranded once competition emerges in its service territory. Finally, it is even questionable whether unbundled network facilities purchased by competitors can be properly classified as stranded investment. As noted previously, it is premature and thus unnecessary to address these issues at this time. For all the foregoing reasons, Cincinnati Bell's arguments concerning the unlawfulness of the unbundling proposal are without merit.

As a final matter, we conclude that providing NECs a general incubation period or waiver from the obligations of unbundling does not appear warranted. As pointed out by OCC, while the 1996 Act does not obligate NECs to provide unbundled access to network elements, the 1996 Act does not prohibit this Commission from adopting such a requirement (OCC supp. comments at 18-19). Such a requirement is neither inconsistent with nor does it prevent implementation of the 1996 Act. Further, we find that this obligation is fully consistent with the authority reserved to the states through Section 253(b) of the 1996 Act. We also agree with staff that, because the NECs are likely to have more advanced and efficient networks, providing unbundling will allow the market to utilize the efficiencies and economies of these new networks. Staff recognized that such a proposal will also minimize the unnecessary and uneconomic duplication of facilities. Imposing this obligation on NECs will not create an undue burden as it is unlikely that NECs will be asked to do much unbundling in the near term and then only upon a bona fide request. The bona fide request standard should minimize the economic effects that unbundling will impose on new entrants.

IX. RESALE

Adoption of the 1996 Act also caused significant revisions to the staff's resale proposal. Consequently, the guidelines addressing the resale issue have been fully

33 By addressing this argument, the Commission is in no way conceding that Cincinnati Bell's taking argument is valid.

rewritten. Section 251(b)(1) and Section 251(c)(4)(B) of the 1996 Act places a general duty on all LECs (both ILECs and NECs) not to prohibit and not to impose unreasonable or discriminatory conditions or limitations on the resale of telecommunications services. The 1996 Act also places an obligation on ILECs to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. Finally, the 1996 Act requires state commissions to determine wholesale rates on the basis of retail rates, excluding the portion attributable to any marketing, billing, collection, and other costs that would be avoided by the local exchange provider.

The revised guidelines reflect that all tariffed services in a LEC's end user tariff shall be available for resale. In addition, those LECs providing local service through their own facilities or in combination with its own facilities must maintain a carrier-to-carrier tariff including its resale service offerings and make its service available to any other LEC through resale. In order to offer volume discounts, a LEC may do so through negotiation, arbitration, or through a tariff offering. Finally, LECs may, subject to Commission approval, place reasonable restrictions on the resale of residential services to business customers.

Following adoption of the 1996 Act, most commenters modified somewhat their respective positions on resale. Cablevision argues that while a NEC could not prohibit resale, a NEC could lawfully defer resale until some future event has occurred or time frame has expired (Cablevision supp. comments at 3). MFS, OCC, and OTA agree that all carriers have a responsibility to offer their services for resale following adoption of the 1996 Act (MFS supp. comments at 12; OCC supp. comments at 50; OTA supp. comments at 2). CompTel, MFS, and United/Sprint assert, however, that the 1996 Act only sets pricing parameters for resold services on the ILECs (MFS supp. comments at 13; CompTel supp. comments at 10; United/Sprint supp. comments at 5-6). TCG notes that reasonable restrictions on resale are specifically permitted by the 1996 Act (TCG supp. comments at 8). Ameritech also maintains that the 1996 Act permits reasonable limitations on the resale of telecommunications services. Therefore, according to Ameritech, the Commission should adopt a guideline placing limitations upon the resale of services being offered at promotional rates. Such a limitation is necessary, according to the company, in order to encourage LECs to offer promotions to customers; otherwise, carriers will be discouraged, to the detriment of end users, from offering these beneficial services (Ameritech supp. comments at 12).

In adopting the revised guidelines governing the issue of resale, we have been guided by the principle expressed in the 1996 Act that, at a minimum, a LEC should reasonably offer its services to other providers on a resold basis. We agree that resale is a significant method by which to encourage new providers to enter the market. Therefore, we are adopting guidelines which place reciprocal resale obligations upon all carriers. As a final matter, in accordance with the provisions of the 1996 Act, we direct the ILECs to resubmit new tariff pages which remove all blanket resale restrictions other than restrictions of the resale of residential services to business customers.

X. DIALING PARITY/1+ INTRALATA PRESUBSCRIPTION

Staff's proposal requires all primary exchange carrier (PEC) ILECs, except Ameritech and GTE, to provide intra and interLATA equal access to end users within 12 months of this order. All NECs were to provide intraLATA and interLATA equal access to end users upon their initial offering of certified local exchange service. Ameritech and GTE were directed to implement intraLATA equal access at such time as they were granted interLATA approval or the Commission pledged to revisit the issue. Staff also recommended implementing intraLATA presubscription on a smart or multi-presubscribed interexchange carrier (PIC) basis. Finally, the staff addressed the procedures whereby current and new subscribers could choose a different intraLATA toll provider.

In the attached guidelines, the Commission has made one substantive revision to the staff's proposal. This revision was necessitated by enactment of the 1996 Act which provides interLATA relief to GTE and conditioned intraLATA dialing parity for the Bell Operating Companies[34] (BOC) on removal of the interLATA restrictions on those companies. In the event that a BOC has not received interLATA relief within three years of the date of enactment, a state may, at that time, implement intraLATA presubscription. The guidelines have been revised accordingly. While smart or multi-PIC presubscription[35] represents a worthy long-term goal, based on a review of the comments, we recognize the general availability of smart or multi-PIC technology and we therefore find that a full 2-PIC methodology is a suitable substitute in the near term. Full 2-PIC presubscription still offers end users the flexibility of choosing the same or different toll providers for their intraLATA and interLATA calls.

The comments on this proposal reflect that NECs believe that they should not be required to offer 1+ presubscription. ICG and AT&T recommend moving up the date that ILECs must offer 1+ presubscription. As previously noted, several commenters recommend implementing intraLATA dialing parity on a full 2-PIC methodology as opposed to a smart or multi-PIC method. Few commenting parties disagreed with staff's proposal that balloting not be used to implement intraLATA toll presubscription. Other commenters disagree with the amount of the intraLATA service order PIC charge that a LEC could recover from end users following expiration of a 90-day grace period. Several ILECs claim that the Commission should tie Ohio's rate to the interstate PIC rate. Other parties propose that a reasonable, cost-based, switching rate be applied. OCC disagrees with both suggestions and recommends adoption of staff's proposal on this issue. A number of parties recommend revising the staff proposal on implementation costs to spread the cost recovery on the basis of intraLATA and interLATA minutes of use (MOUs) as opposed to only intraLATA MOUs.

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34 Ameritech is one of the Bell Operating Companies.

35 Smart or multi-PIC presubscription enables subscribers to select multiple carriers for various subdivisions of their intra and interLATA calls.

The Commission determines that commenters have provided no rationale sufficient to justify modifying the staff's proposal regarding the implementation time frame for 1+ intraLATA presubscription. NECs are not harmed by this proposal as the engineering and programming required to permit intraLATA presubscription can be programmed into the switches during installation of facilities prior to commencing operations. In fact, we envision that NECs can use intraLATA presubscription availability as a tool to market their local service in an attempt to obtain customers. The guidelines also recognize that similar engineering and reprogramming of ILECs' switches will have to take place in order to implement this proposal. Therefore, providing them a 12-month period of time to accomplish this task is justified. Regarding the service order charge, we are unconvinced by the arguments seeking to modify the staff's position. In any event, no party offered substantive proof that the proposed charges are either uncompensatory or burdensome nor was there any significant support for an alternative position.

The final issue involves the appropriate compensation method for recovering the implementation costs of intraLATA presubscription. We find that the most appropriate method of cost recovery is to spread the implementation costs over all minutes of use presubscribed on an intraLATA basis rather than over combined interLATA and intraLATA MOUs. Basing cost recovery solely upon intraLATA MOUs was approved by this Commission in *Cincinnati Bell*, Case No. 93-432-TP-ALT, Opinion and Order (May 5, 1994) and *Western Reserve*, Case No. 93-230-TP-ALT, Opinion and Order (March 30, 1994). In those two cases, Cincinnati Bell and Western Reserve, as part of their respective alternative regulation plans, agreed to implement intraLATA presubscription. Those two ILECs have not, to date, argued that a cost recovery mechanism based solely upon intraLATA MOUs overburdened them. Further, as one commenter noted, basing cost recovery for intraLATA presubscription partially on interLATA MOUs could unequitably cause cost recovery from providers not involved in the intraLATA market.

XI. NON-DISCRIMINATION BETWEEN COMPETITORS

Staff's proposal requires LECs to report and justify, on an ongoing basis, denied and unfulfilled carrier service requests. The NECs commenting on this issue suggest that the staff's proposal did not go far enough. CompTel and AT&T set forth comprehensive lists of additional support services and interfaces that are necessary for NECs to successfully compete against the ILECs (CompTel initial comments at 25-28; AT&T initial comments, Appendix A, Part 1 at 45). AT&T also recommends that the Commission require the incumbents to establish mechanized interfaces essential to providing prompt customer service (AT&T initial comments, Appendix A, Part 1 at 45). The ILECs generally argue that this provision should be deleted. However, should the Commission desire to maintain this requirement, the ILECs recommend clarifying this requirement by stating that only unfulfilled bona fide requests need be reported.

The proposed guidelines would also require all LECs to submit annual TPM data submissions. There was almost universal opposition from all commenters to the provision of this information in a competitive environment. Ameritech even claims that Section 256 of the 1996 Act eliminates this Commission's role of overseeing coordinated network planning. If the information were to be provided, however, a number of commenters suggest the submissions be required on a less frequent basis. Further, staff's proposal prohibits LECs from accessing the customer proprietary network information (CPNI) of another interconnecting carrier or reseller for the purpose of marketing services to the interconnecting carrier or resellers customers. MFS urges the Commission to broaden this provision to include prohibiting ILECs from soliciting a NEC's customer where the competitive carrier is in the process of ordering bottleneck facilities from the LEC in order to provide service to the end user (MFS initial comments at 45). Ameritech maintains that the LEC should have every right to seek to retain customers when a competitor is ordering a facility such as the local loop. In any event, Ameritech claims that there is no need to expand the CPNI requirements beyond those set forth by the FCC (Ameritech reply comments at 48). The staff's final proposal in this section addresses installation and maintenance. This provision requires ILECs and NECs to provide to competing carriers installation, maintenance, and repair within the same time intervals that the carrier provides itself. Ameritech suggested revising this to reflect that all carriers treat other certified carriers in a nondiscriminatory manner while MFS argues that staff's proposal is absolutely necessary in order to avoid potential discrimination (Ameritech initial comments, Appendix 3 at 40; MFS initial comments at 41).

We find that the provision of TPM data by all LECs will afford us a valuable tool to measure the extent to which competition is advancing throughout the state. In *Telecommunications Performance Measurement Database*, Case No. 91-52-TP-UNC (January 17, 1991), we established that the TPM includes market information, network data, and service quality data. Contrary to Ameritech's position, nothing within the 1996 Act prohibits this Commission from requiring the submission of TPM data to monitor the competitive marketplace in Ohio. In fact, we have noted that the purpose of the TPM data is to monitor market information, network data, and service quality. To the extent these filing requirements are imposed on all providers in a competitively neutral fashion, we find that submission of TPM data is necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers all in accordance with the authority reserved to the state's through Section 253(b) of the 1996 Act. Such information is also necessary since the states have been given an advisory role under the 1996 act concerning BOC entry into long distance.

The Commission does not find any justification for broadening the staff's proposal regarding CPNI. The proposal as written is sufficiently broad to encompass a variety of situations. By attempting to list every potential act which may constitute a violation of this guideline we run the risk of misleading carriers into believing that a nonlisted action does not constitute an unreasonable practice. Should any local to right-of-way. The General Assembly has afforded the Commission jurisdiction over a number of right-of-way issues. Given the importance of this issue to the provision of competition for local services, we find that it is appropriate to promulgate guidelines outlining the rights and responsibilities of public utilities on this issue. Thus, we find that it is appropriate to adopt staff's proposal in this regard with a minor revision. We will revise the language dealing with building riser space to clarify that any arrangements entered into between a telephone company and a private building owner should not exclude the use of riser space, conduit, and closet space by other telephone companies. We find that, with these minor textual revisions, the staff's proposal provides a framework informing local service providers of their rights and responsibilities under both Ohio and federal law. Finally, in light of the fact that the FCC will not promulgate rules to govern the compensation of local carriers for providing access to poles, ducts, conduits, and right-of-way for up to two years, staff's recommended compensation method is a reasonable proposal.[36]

XIII. UNIVERSAL SERVICE

Like compensation, the staff's proposed guidelines concerning universal service have undergone significant revision due to the enactment of the 1996 Act. Therefore, in lieu of setting forth the staff proposal, we will set forth the revised proposal and then address only those comments which are applicable to the revised proposal. The Definitions Section sets forth a list of services that, at a minimum, must be made available at affordable rates to all who desire such services. In the revised guidelines, the reference to a 400-minute usage package has been replaced by a requirement to make available flat-rate service. The list of services comprising universal service will be reviewed periodically by the Commission as telecommunications and information technologies and services advance and as societal needs dictate. We note that the ability to transmit data at a minimum base rate of 9600 offered as a part of universal service will facilitate use of and access to the internet. Also reflected in the revised guidelines are separate and distinct components for universal service funding (USF) assistance, determinations and calculations for USF contributions, targeted and specific high cost and low income support programs and withdrawal criteria, and a selection procedure for a USF administrator subject to Commission oversight.

Several commenters claim that inclusion of a usage package as part of the basic telecommunications service is problematic. Consumer interests maintain that these commenters have provided no support or rationale for their position. The Ashtabula Coalition notes that there will be consumer revolt should the Commission fail to include some level of flat-rate service under universal service (Ashtabula Coalition initial comments at 7). Other commenters seek to eliminate, add, or modify various services to the universal service list. ALLTEL and GTE recommend restructuring the proposal to eliminate the second tier of universal service (ALLTEL initial comments,

[36] Under the terms of 1996 Act, any increases in the rates for pole attachments that result from adoption of the requirements in the act are to be phased in over a period of five years following the date of enactment.

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Attachment 2 at 28; GTE initial comments, Appendix B at 35). Ameritech and GTE seek to broaden the funding sources of the USF (Ameritech initial comments, Attachment 3 at 43; GTE initial comments, Appendix B at 37-38). New Par, on the other hand, argues that the Commission lacks the requisite authority to require cellular providers to contribute to a universal service fund (New Par initial comments at 6-7). Consumer interests urge the creation of a Telecommunications Literacy and Access Fund with all carriers being assessed to offset the costs of this program.[37] In addition, OCC maintains that a portion of low income assistance should include funding to provide equipment to allow the communicatively impaired access to the telecommunications network (OCC reply comments at 114).

A number of commenters, currently engaged in the provision of interexchange services, sought a dollar-for-dollar access charge or other targeted funding requirement (i.e., carrier common line charge and residual interconnection charge) reduction based upon the revenues paid into the USF for each ILEC and SLEC. According to MCI, such a dollar-for-dollar reduction is necessary in order to ensure against a double recovery from interexchange carriers (MCI initial comments at 49). Several ILEC commenters assert that only incumbent carriers should be able to obtain USF monies because only ILECs have carrier of last resort (COLR) obligations. Other ILEC commenters propound that only facilities-based carriers should have access to universal service funds. OCC rebuts the ILECs' assertion by stating that the costs to serve high cost areas do not arise primarily from the COLR obligation (OCC reply comments at 113). Similarly, OTA recommends that the ILECs should only bear the carrier of last resort obligations for three years by which time the Commission will have concluded a proceeding to establish the appropriate standards for COLRs (OTA initial comments at 30).

Regarding low income assistance, OTA posits that adoption of an expanded telephone assistance program beyond what is currently in place would be clearly contrary to the General Assembly's intent. Moreover, if the proposal is to allow recovery of the costs of expanding the current telephone assistance programs through the current universal service funds, such an event would necessitate an amendment to the statutes relating to the current tax credit. Since the Commission is without authority to amend programs enacted by the General Assembly, OTA argues the Commission should revise the proposal accordingly (OTA initial comments at 31). OCC argues that the current statutes only speak to the parameters of the program to be supported by tax revenues; it did not forbid any other program funded by telecommunication users (OCC reply comments at 116).

Numerous commenters responded to the questions appended to the staff proposal concerning the appropriate manner in which to design a high cost proxy model that is representative of high cost subscribers generally, and that could be used in

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[37] The City of Cleveland also proposes liberalized payment arrangements, local disconnection only for the nonpayment of local service charges, and the establishment of a minimum repayment requirement in order to reestablish service. As pointed out by Ameritech, these issues are under consideration by the Commission in Case No. 95-790-TP-COI and need not be addressed in this docket.

place of detailed company-specific cost studies. Cincinnati Bell claims that there is substantial variability between individual ILECs; thus, it is impractical to establish a statewide average cost to identify low versus high cost areas (Cincinnati Bell initial comments, Appendix D at 4-5). Cincinnati Bell also argues that due to the unique characteristics of each ILEC, all LECs would need to perform their own cost studies (*Id.*). OCC submits that the variability between individual ILECs may have more to do with management decisions and little to do with actual local cost characteristics (OCC reply comments at 120). OCC also notes that Cincinnati Bell fails to acknowledge that, unless the LEC performs a cost study for each subscriber, any combined cost study is necessarily a proxy for true costs. Therefore, according to OCC, unless individual cost studies are to be performed, a statewide proxy makes more sense than individual company-specific studies (*Id.*).

OTA and United/Sprint aver that the administrative expenses associated with the development of company-specific studies are quite large and, consequently, could prove to be burdensome to the ILECs (OTA initial comments at 41; United/Sprint initial comments at 53). For this reason, United/Sprint recommends that the Commission use the Benchmark Cost Model (BCM) as a proxy for individual telephone company developed costs.[38] Ameritech maintains that the BCM may be an appropriate mechanism to distribute funds from the USF but it is not an appropriate vehicle for sizing the universal service fund (Ameritech reply comments at 60). Ameritech further avers that, until all parties are comfortable that the BCM is a reasonable proxy for actual cost, actual cost should be used to determine the need for high cost funding (*Id.*). OCTA submits that the use of company-specific or proxy-costing studies is not likely to produce any useful information due to the variables and inputs used to develop such studies (OCTA initial comments, Appendix C at 12).

Having thoroughly reviewed the voluminous comments submitted on universal service, the Commission makes the following determinations. The arguments concerning adoption of a particular usage package are no longer relevant in that the revised guidelines require that NECs desiring to receive USF funds must only make a flat-rate service option available. Those commenters seeking to eliminate, add, or modify various services included on the list of universal services have failed to justify their positions; therefore, those positions need not be further addressed. The Commission does, however, agree with those commenters seeking to eliminate the second tier of universal service.

On the issue of which carriers should contribute to Ohio's USF, we note that all Commission-registered telephone companies having intrastate regulated revenues shall pay into the intrastate fund. Moreover, contrary to the argument raised by New Par, Section 254(f) of the 1996 Act specifically provides that "(e)very telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State." New Par also

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[38] The BCM was jointly developed by MCI, NYNEX Corporation, Sprint Corporation, and US West Inc.

submits that the proposed revenue tax funding mechanism is anti-competitive and discriminatory against wireless providers. New Par's assertions regarding the lawfulness of a revenue tax funding mechanism are premature at this time. As noted above, the Commission is proposing to base Ohio's USF upon the TOTAL intrastate revenues of all certified providers. By this order, the Commission is not calculating any certified carriers' specific USF obligation. To the extent New Par desires to raise this issue in a future USF proceeding, the company is not prohibited from doing so.

Regarding the dollar-for-dollar decrease argument raised by the IXCs, we agree with the arguments raised by OCC that this proposal incorrectly assumes that all support for universal service comes from access charges. Moreover, we note that, with the exception of the recent stipulation reached in the Ameritech alternative regulation proceeding, there has been no corresponding commitment made on behalf of the IXCs to pass the savings from access charge reduction on to consumers in the form of lower toll rates. In addition, the IXCs presented no proposal to ensure that those monies are returned to consumers proportionally to how they were collected. Other commenters have argued that only ILECs should have the ability to withdraw funds from the USF due to the requirement that the incumbent providers continue as the carrier of last resort at the present time. We determine that the most appropriate manner in which to encourage facilities-based providers to serve all high-cost subscribers is by allowing all such providers to withdraw from the state USF at least during this interim period until and unless a bidding process, or some other mechanism to assign carrier of last resort obligations, is finalized and an award has been made. Otherwise, there would be little if any incentive for NECs to seek to serve areas determined to be high cost. Contrary to the concern raised by OTA that the ILECs will be forced to continue as the COLR, we are committed to evaluating whether to implement a bidding process or some other mechanism for the COLR obligation within 12 months of issuance of these guidelines. Obligating ILECs to continue, for such a short time frame, the responsibilities they already are performing does not appear overly burdensome.

Concerning OTA's argument on the expansion of low income assistance, we agree with OCC that the current statutes only affect the parameters of the program to be supported by tax revenues. We have required NECs to immediately offer telephone service assistance and service connection assistance to eligible customers. Moreover, we have indicated our intent to establish an incentive for the offering of expanded lifeline programs, such as those offered in the Ameritech alternative regulation case, through a crediting to USF obligations for those ILECs and NECs who offer such programs outside of alternative regulation committments. We have also, through the revised guidelines, adopted a proxy model based upon the BCM to identify high cost support benchmark costs. In so doing, we are acknowledging the concerns expressed that the administrative costs associated with performing company-specific cost studies are quite burdensome for all LECs. In adopting this approach, we also recognize that there are alternative methods of calculating benchmark costs. Therefore, any LEC may petition the Commission to adopt alternative benchmark costs based on a company-specific analysis.